

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, Judge

DIVISION I

CACR 06-719

LACUMBA SMITH

February 21, 2007

APPELLANT

APPEAL FROM THE CIRCUIT COURT
OF SEBASTIAN COUNTY
[NOS. CR-95-54B, CR-97-562, CR01-
904]

V.

STATE OF ARKANSAS

APPELLEE

H O N O R A B L E J A M E S R .
MARSCHEWSKI, JUDGE

AFFIRMED

SARAH J. HEFFLEY, Judge

Lacumba Smith appeals the revocation of his suspended sentences for first-degree battery (CR-95-54B), felon in possession of a firearm (CR-97-562), and possession of a controlled substance (CR-01-904). Upon revocation, the trial court sentenced him, respectively, to concurrent terms of five, three, and two years in prison. On appeal, appellant contends that there is insufficient evidence to support the revocations. We disagree and affirm.

In its petition to revoke, the State alleged that appellant had violated the terms of his suspended sentences by possessing a firearm and by failing to pay a fine and court costs. In

its decision to revoke, the trial court found that appellant had violated both conditions of his suspended sentences.

To revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003).

At the revocation hearing, the State presented the testimony of Officer James Boyd, a patrolman with the Ft. Smith Police Department. Officer Boyd testified that on October 15, 2005, he and another officer went to a night club to serve a warrant on another individual. While they were there, they detected an overwhelming odor of marijuana inside the club. The other officer made first contact with appellant, who was sitting in a corner with a woman on his lap. As Officer Boyd approached, the woman got up and walked away. Boyd testified that he felt something hit his boot when appellant stood up. It was a loaded magazine from a gun. Boyd said that, as it was registering in his mind what had fallen on his foot, a 9 millimeter pistol fell from the right side of appellant's body. He said that when these items fell the woman who had been sitting with appellant was no longer in sight and that appellant was the only person in the vicinity. Appellant told Officer Boyd that the weapon belonged

to the woman.

Appellant argues that this is a case of constructive possession, that the evidence showing his possession of the weapon was circumstantial, and that it was just as likely that the woman had the weapon and placed it in his lap before she got up and walked away. We disagree.

The State need not prove that the accused physically possessed the contraband in order to sustain a conviction for possession if the location of the contraband was such that it could be said to be under the dominion and control of the accused. *George v. State*, 356 Ark. 345, 151 S.W.3d 770 (2004). Rather, constructive possession is sufficient. *Loar v. State*, ____ Ark. ____, ____ S.W.3d ____ (Nov. 30, 2006). When seeking to prove constructive possession, the State must establish that the defendant exercised care, control, and management over the contraband. *Saul v. State*, 92 Ark. App. 49, 195 S.W.3d 370 (2005). Constructive possession may be established by circumstantial evidence. *George v. State, supra*. Thus, control can be inferred from the circumstances, such as the proximity of the contraband to the accused, the fact that it is in plain view, and the ownership of the property where the contraband is found. *McKenzie v. State*, 362 Ark. 257, 195 S.W.3d 370 (2005).

The argument appellant has raised might carry more force had this been an appeal from a criminal conviction. However, evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). For this reason, we have recognized that a complete constructive-

possession analysis does not apply to revocation proceedings. *Palmer v. State*, 60 Ark. App. 97, 959 S.W.2d 420 (1998); *Billings v. State*, 53 Ark. App. 219, 921 S.W.2d 607 (1996). Thus our inquiry is limited to deciding whether the trial court's finding that appellant possessed the weapon is clearly against the preponderance of the evidence. *See Palmer v. State, supra*. The testimony was that the weapon fell from the right side of appellant's body as appellant stood up. Other than the officers, appellant was the only person in the immediate area. We hold that the trial court's finding is supported by a preponderance of the evidence, and we affirm the decision to revoke appellant's suspended sentences. Because it was only necessary for the State to prove one violation, we need not discuss the trial court's finding concerning appellant's failure to pay the fine and court costs. *Richardson, supra; Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003).

Affirmed.

HART and MARSHALL, JJ., agree.